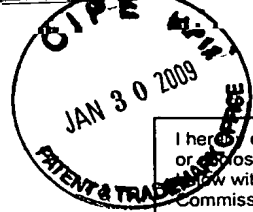
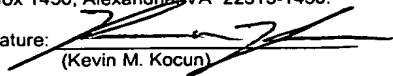


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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown above with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
Dated: January 27, 2009 Signature: 
(Kevin M. Kocun)

Docket No.: SPINE 3.0-455 CIP CONT VI
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	:
Zubok et al.	:
Application No.: 10/781,507	: Group Art Unit: 3733
Filed: February 18, 2004	: Examiner: J. L. Cumberledge
For: INSTRUMENTATION AND METHODS FOR	:
USE IN IMPLANTING A CERVICAL	:
DISC REPLACEMENT DEVICE	:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COMMUNICATION

Dear Madam:

The present communication is further to the Amendment which was filed on January 9, 2009. No claims have been added, amended, or canceled, and therefore, claims 1-5 and 9-24 remain pending in the present case. The following sets forth Applicants' comments.

Subsequent to the telephone interview with the Examiner in connection with the present case (evidenced by the Examiner's Interview Summary dated January 12, 2009) and U.S. Patent Application Serial Nos. 10/781,505 and 10/781,506, the undersigned conducted January 14 and 16 interviews with Examiner Schillinger regarding U.S. Patent Application Serial No. 10/781,504 ("the '504 Application"). As was mentioned in both the previous telephone interview and the January 9th Amendment, these four cases include similar claimed subject

matter. The most recently filed Information Disclosure Statement ("IDS") submitted in connection with this matter lists each of the cases, as well as prior art cited in each. Similar IDSs have been filed in each of the other cases as well.

In the telephone discussions with Examiner Schillinger (held on January 14 and 16, 2009), at least one prior art reference which was utilized by the Examiner in connection with the present case was discussed, U.S. Patent No. 6,113,637 to Gill et al. ("*Gill*"). Gill is directly related to U.S. Patent Application Publication No. 2003/0147454, which was utilized by the Examiner. Although Applicants remain of the belief that the structure and operation of the "insertion plate" in *Gill* and that of the insertion plate of the present invention significantly differ, Applicants wished to point out certain matters that were raised by Examiner Schillinger.

First, Examiner Schillinger pointed out that while the insertion tool of *Gill* is only capable of being connected to the holes in the flanges of the intervertebral disc replacement device of that reference which are ultimately meant to receive bone screws for fixing the device to adjacent vertebral bones, apertures (80) in the insertion tool of *Gill* are designed so as to be slightly larger than the heads of the screws (37) that are used to fix components (22, 24) of prosthesis (20) to the respective vertebrae. In other words, in order to ultimately fix the intervertebral disc replacement device to the adjacent vertebral bodies utilizing the components taught in *Gill*, screws must be placed through the unoccupied apertures in the "insertion plate" of *Gill* in order to partially fix the prosthesis components to the vertebrae. Thereafter, the insertion tool must be removed (or at the very least, uncoupled from the prosthesis) to allow the remaining two screws to be placed through the prosthesis to completely fix its components to the vertebrae.

This differs significantly from the present invention which, by way of example and as is more specifically detailed in the January 9th Amendment, teaches an insertion plate 700 that is capable of being coupled with mounting screw holes 509, 609 of the intervertebral disc replacement device 400, thereby leaving bone screw holes 508a, 508b, 608a, 608b capable of receiving bone screws while the insertion plate is still coupled to the device. The design of the insertion plate 700 is such that no portion of the plate extends over the bone screw holes.

Moreover, again by way of example, insertion plate 700 of the preferred embodiment is detachably coupled with an insertion handle 800 so as to allow for the construct made up of the device 400 and insertion plate 700 to be manipulated by the handle when coupled and to stand alone when uncoupled. As is further mentioned in the January 9th Amendment, paragraph [0069] of the originally filed specification discusses the fact that the insertion plate configuration of the present invention allows for the two components of the intervertebral disc replacement device to be situated in a similar fashion to that of a spinal plate. Thus, there exist significant differences between the present invention and *Gill*.

Second, the additional teachings pointed out by Examiner Schillinger do not change Applicants' previously recited positions, and in particular, Applicants remain of the opinion that the amended claims presented in the January 9th Amendment still overcome *Gill*. Namely, both independent claims 1 and 10, as amended, require the step of "fixing the first member to the first vertebral bone and the second member to the second vertebral bone while the first and second members remain as the single unit by way of the insertion plate." As is discussed above, *Gill* does not teach such a method step. Rather, the components taught in *Gill* only allow for a partial fixation of the first and second members of its intervertebral

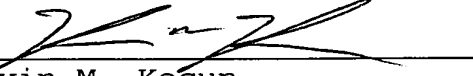
disc replacement device to the respective vertebrae while the "insertion plate" is still attached to the components. A complete fixation, as in the present invention, can only be accomplished with the devices and methods taught in *Gill* upon removal or uncoupling of the "insertion plate" from the components.

Therefore, Applicants reiterate the positions set forth in the January 9th Amendment, and respectfully request allowance of each and every one of the currently pending claims. As it is believed that all of the rejections set forth in the Official Action have been overcome, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 27, 2009

Respectfully submitted,

By 
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